

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****PATENT**

Appl. No.: 10/068,570 Confirmation No.: 6923
Applicant(s): Vodyanoy *et al.*
Filed: February 6, 2002
Art Unit: 1641
Examiner: Changhwa J. Cheu
Title: LIGAND SENSOR DEVICES AND USES THEREOF

Attorney Docket No.: 035721/265190
Customer No.: 00826

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION BY INVENTOR VITALY VODYANOV

I, Vitaly Vodyanoy, hereby declare that:

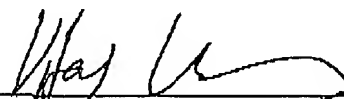
1. I am a co-inventor, along with Alexandre M. Samoylov, Tatiana I. Samoylova, and Suram T. Pathirana, of the invention claimed in the above-identified patent application, which claims priority to U.S. Provisional Patent Application No. 60/266,755, filed February 6, 2001.
2. I am a co-author of the scientific article entitled "Rapid and sensitive biosensor for *Salmonella*" which was published in the June 2000 issue of *Biosensors & Bioelectronics* (2000) 15: 135-141. Co-inventor Suram T. Pathirana is also a co-author of this article.
3. This article has been cited against the above-identified patent application as the basis for a rejection of claims 1-4, 14-15, and 23-24 under 35 U.S.C. §102(a). Particularly, the Office Action (August 6, 2004, page 4, #6) states:
With respect to claims 2-4, Pathirana et al. teach coating (e.g., preparing) phospholipids on a Langmuir-Blodgett film as a monolayer for peptide immobilization (See Section 2.6.1 Surface technique and Section 2.6.2.1 Phospholipid Monolayers). Furthermore, Pathirana et al. teach using 2% volatile organic solvent ethanol for deposition of the phospholipids. *Supra*. The monolayer was formed on the air-liquid interface by allowing the

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spreading solution to run down an inclined wettable planar surface that is partially submersed, e.g., 90-170 degrees, into the subphase. (See Figure 1 and Section 2.6.2.1) The flow rate down the plate was maintained at about 0.1 ml/min with a constant surface compressing pressure of 23 mN/m. (Section 2.6.2.1)

4. The work described in the Office Action passage cited above was performed entirely by myself or inventor Suram T. Pathirana. The contribution of the remaining four co-authors listed on the *Biosensors & Bioelectronics* (2000) 15: 135-141 article was on other aspects of the study and was not related to the preparation of the Langmuir-Blodgett films or monolayers as described in the Office Action passage cited above.
5. Thus, all of the subject matter in the article that has been asserted as the basis for the rejection of claims under 35 U.S.C. §102(a) is subject matter that originated with inventors of the present patent application. In view of the foregoing facts, I submit that the *Biosensors & Bioelectronics* (2000) 15: 135-141 article is not prior art to the above-identified patent application because it is not "by another" under 35 U.S.C. §102(a).
6. The *Biosensors & Bioelectronics* (2000) 15: 135-141 article was published less than one year prior to February 6, 2001, which is the priority date of the above-identified patent application.
7. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the above-identified patent application or any patent issued thereon.

October 25, 2004
Date


Vitaly Vodyanoy